



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01558/2017

THE IMMIGRATION ACTS

Heard at Field House

On 4th July, 2017

Decision & Reasons

Promulgated

On 11th July, 2017

Before

Upper Tribunal Judge Chalkley

Between

[J K]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Lee, Counsel instructed by Rashid & Rashid Solicitors

For the Respondent: Mr P Singh, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Albania born on [] 1990. She has obtained leave to appeal against the determination of First-tier Tribunal Judge J

Bartlett promulgated on 18th April, 2017 dismissing the appellant's appeal on asylum, humanitarian protection and human rights grounds.

2. The challenge to the judge's determination centres on what she said at paragraph 34. For completeness I set out that paragraph below:-

"I have considered section 55 of the Borders, Citizenship and Immigration Act 2009. I find that it is in the appellant's son's best interest to remain with the appellant whether that be in the United Kingdom or Albania. I find that the appellant has a close and loving relationship with her son as was evidenced by their behaviour at the oral hearing. I find that British society no longer attaches stigma to single mothers but that the appellant and her son will face discrimination and some stigma in Albania as a result of the appellant's unmarried status. I consider that the objective evidence recognises that unmarried mothers and their children are discriminated by the patriarchal Albanian society. Only when these wider societal attitudes are considered do the appellant's son's best interests tip towards staying in the United Kingdom."

3. Earlier in the determination, the judge had noted that the appellant had given birth to a child out of wedlock. She started a relationship with a man at the beginning of July 2015 and saw him secretly once every two weeks. In September 2015, the appellant's maternal uncle contacted the appellant's father to arrange a marriage of the appellant with [R]. It was in February 2006, that the appellant realised that she was pregnant. The appellant believed that were she to remain in Albania she would have been at risk from her family who would wish to kill her.
4. The judge made numerous adverse credibility findings against the appellant. She noted a number of inconsistencies. The first was that when she discussed with the father of her child the fact that she was pregnant, she claimed that he asked her to have an abortion and she refused and as a result they both had to leave Albania. That is what she said in her witness statement, but at the hearing when the judge asked the appellant when [G] had first talked about terminating her pregnancy the appellant stated that it was when she was in Italy, not when she was in Albania. The judge noted other inconsistencies about the fact that [G] took her passport from her, when in fact she claimed that she never had a passport. She believed that there were inconsistencies in relation to the claimed arranged marriage and did not accept that the appellant was going to be at risk from her family were she to be returned to Albania. She found that claims that the appellant had not had contact with her sister when she was in Italy were fabricated and at paragraph 25 was satisfied that as a mother of a child out of wedlock she would face some discrimination and stigma from Albanian society, but she did not accept that her family would harm her or that they would disown her. She accepted that she was likely to face some discrimination from other members of the town or village from where she came, and that whilst this would be distressing, it would not amount to persecution at the hands of her family or of society in general.

5. Permission was given on the basis that the judge's findings as to the best interests of the appellant's child were confused and that the findings at paragraph 34 of her decision were conflicting. Mr Singh on behalf of the Secretary of State accepted that there was an error where the judge referred to the fact that it is only when wider societal attitudes are considered that the appellant's son's best interests tipped towards staying in the United Kingdom. That, Mr Singh said, suggests that the judge has made conflicting findings and amounts to an error of law. Mr Lee submitted that there should be a full assessment of the child's best interests and the Presenting Officer agreed.
6. I reserved my decision.
7. I did not necessarily believe on reading the determination that the judge had erred. It seemed to me that all the judge was saying was that the only thing in favour of the appellant and her child being permitted to remain in the United Kingdom were the societal attitudes of Albanians. However, I agree that it is not clear and I was persuaded by Mr Singh that the judge had erred. What the judge said at paragraph 34 has led to some confusion and is not entirely clear.
8. The appellant is entitled to a clear determination and I therefore considered Section 55 of the Borders, Citizenship and Immigration Act 2009 myself. I agree with the findings of the judge. It must be in the appellant's son's best interest to remain with the appellant, whether that be in the United Kingdom or in Albania.
9. I have considered the appellant's bundle of evidence, including her witness statement. In her witness statement, the appellant of course expresses the fear that she will be at risk from her family members in Albania. At paragraph 38 she says that she has a future fear for her life from her father, because she dishonoured him by not accepting the marriage he arranged with her uncle and because she bought shame on him and the family. She also fears from [R] and his family because she broke the promise that her uncle and father gave to him that she would marry him. Importantly, she does not talk about societal attitudes or fearing harm from any other source.
10. The objective material, of which there is a large amount in the appellant's bundle, but particularly the Home Office Country Information and Guidance paper entitled "*Albania: Women fearing domestic violence Version 1.0 April 2016*", dealing with societal attitudes to women generally and those who face domestic violence. The whole of section 6 of that report supports the conclusion of the judge that it is likely that the appellant will face some discrimination and stigma as a result of her unmarried status. Inevitably, just as would have been the case in the United Kingdom some years ago, the appellant's son is likely to face some stigma also. Section 7 of the report details services available to victims of violence. The report by Armela Xhaho, "Honor Crimes of Women in

Albanian Society: Boundary Discourses on Violent Culture and Traditions” speaks about honour crimes and community pressure. It also speaks about cultural attitudes, beliefs, patriarchal claims and norms of society, but of course there is no question here that this appellant will be the subject of an honour crime. She can go back to live in the bosom of her family, given the findings of the judge. She will have their support and love, as will her son. Indeed, should they suffer discrimination her family will protect them and support them.

11. The appellant’s son is entitled to be brought up in his own culture amongst his own family members, speaking his own language and being taught Albanian history. Having considered all the evidence in the round I believe that the best interests of the appellant’s son are to remain with his mother and I do not believe that were she to be returned to Albania there is any reason for believing that he could not return also.
12. The judge went on to consider paragraph 276ADE(1)(vi) and concluded that there were no significant obstacles to the appellant’s integration into Albania. I have seen no evidence to suggest that there might be any obstacles at all, bearing in mind that the appellant has been found not to have been disowned by her family. I agree that she is likely to face negative attitudes from ignorant sections of society in Albania, but I also agree with the First-tier Judge that she will be able to return and live with her family who would be in a position to offer her practical support with the rest of her life and caring for her child.

Notice of Decision

13. I find that the judge did materially err in her decision and I set aside Paragraph 34 of her decision. I remake the decision myself. For the reasons I have given the appellant’s appeal is dismissed.
14. No anonymity direction is made.

Richard Chalkley

Upper Tribunal Judge Chalkley Date: 11th July 2017

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley

Upper Tribunal Judge Chalkley Date: 11th July 2017